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WOODVILLE
YELLOW SPRINGS

June 20, 1997

The Honorable John D. Dingell
Ranking Member
United States House of Representatives Committee on Commerce
Washington, D.C. 20515

Dear Congressman Dingell:

On behalf of American Municipal Power-Ohio (AMP-Ohio) and the Ohio Municipal Electric Association (OMEA), we appreciate your invitation to respond to questions regarding electric industry restructuring. We have been following carefully the developments and discussions in Washington related to industry restructuring and are pleased to have the opportunity to offer our perspective. We think it will prove useful to begin our response to your inquiry by providing some basic information about our organizations, Ohio municipal electric systems and the role we have played together in Ohio's power industry.

PUBLIC POWER IN OHIO

Ohio is home to 84 municipal electric systems serving approximately 330,000 meters statewide. To put that in context, public power accounts for approximately 5.8 percent of Ohio consumers and 1.1 percent of the state's geographic area. Ohio municipal electric systems range in size from Cleveland Public Power, with more than 70,000 meters, to the village of Custar, with 114 meters. The majority of Ohio public power communities have fewer than 5,000 residents.

AMP-Ohio is the nonprofit wholesale power supplier and services provider for 77 Ohio and two West Virginia municipal electric systems. The OMEA is the legislative liaison to 79 Ohio municipal electric systems and AMP-Ohio. Ohio municipal electric systems have been working together through these organizations since 1962. AMP-Ohio, the OMEA and most individual Ohio municipal electric systems also are active in the American Public Power Association (APPA).

For more than 15 years, AMP-Ohio has been involved in the competitive purchase and delivery of wholesale power as an aggregator for its members. *Through interventions in regulatory proceedings involving Ohio investor-owned electric companies, Ohio municipal electric systems gained access to transmission wheeling and the ability to shop for electricity generation services long before the federal Energy Policy Act of 1992 required the wheeling of wholesale power. As a result, Ohio has experienced the benefits of a competitive wholesale electric market for many years, and Ohio municipal electric systems have played the key role in this arena.*

Today, municipal electric communities are the only places in Ohio where true competition exists in the electric industry. There is door-to-door competition for retail customers between investor-owned electric and municipal electric systems in Cleveland and Columbus. In addition, competitive options exist in most of our other member systems, where either there are customers inside municipal limits already served by another supplier or there is no local ordinance in place to prevent such competition.

Ohio is a Home Rule state and Ohio municipal electric systems take their powers for local control and governance from those provisions of our state Constitution. Offsetting the protections offered by Home Rule, Ohio municipal electric systems are limited by the state Constitution to making no more than 33 percent of their sales outside city or village limits.

In 1996, the noncoincidental system peak for AMP-Ohio member communities was 1,689 megawatts. Ohio municipal electric systems receive their power supply from a diversified resource mix, including: wholesale power purchases through AMP-Ohio and on the open market; energy produced at the 213-megawatt, coal-fired Gorsuch Generating Station operated by AMP-Ohio; individual community-owned generation facilities; and municipal generation joint ventures such as the 42-megawatt, run-of-the-river Belleville Hydroelectric Plant under construction on the Ohio river. Ohio municipal electric systems are primarily distribution utilities; however, some systems do operate local generating facilities. Of the 14 Ohio public power systems with community-owned generation units – coal, natural gas, diesel and hydroelectric – most operate peaking generation and others operate base-loaded units under 50 megawatts.

RESPONSES TO QUESTIONS

1. *What are your biggest concerns about retail competition? If retail competition has been adopted by the state(s) you serve, or is under active consideration, what position have you taken and why?*

The Ohio General Assembly has a Joint Select Committee on Electric Utility Deregulation examining restructuring and related issues. This committee has been charged with issuing a report by Oct. 1, 1997. The OMEA has been an active witness before the committee. One piece of legislation has been introduced in the Ohio General Assembly – House Bill 220 – which calls for retail competition for all customers by Jan. 1, 1998. We were one of the stakeholders represented at the drafting table. Further, our state utility commission has convened a round-table discussion that has been meeting for more than a year. At this point, activity in Ohio is centered on the Joint Select Committee hearing process.

We believe that retail competition is inevitable and that if choice at the retail level is implemented in a responsible manner it can bring some of the same price benefits to retail customers that Ohio municipal electric systems have seen at the wholesale level. *However, we do have very grave concerns about how restructuring is implemented – the devil obviously will be in the details. The biggest issues for Ohio public power systems are: (1) market power mitigation; (2) the importance of continued local control; (3) creating an awareness and understanding of the truth behind the “level playing field” myth and other falsehoods perpetuated by opponents; and (4) the treatment of environmental issues associated with restructuring.*

2. *Do you believe Congress should enact legislation mandating retail competition by a date certain, and why or why not?*

Yes, but we believe that Congress should allow the states adequate time to move first. There is considerable activity at the state legislative and regulatory level and we

strongly believe that local decision makers should retain the authority to determine the economic and social impact of policy changes regarding municipal electric systems. We oppose federal pre-emption of the constitutional and statutory authority of state and local governments to implement customer choice in the manner best determined by those legislative bodies. To the extent that Congress does mandate retail competition, we encourage deference to state and local actions.

3. *Some privately owed utilities assert that public power enjoys a broad range of tax-related and other advantages which investor-owned utilities do not, and that these would unfairly benefit public power in a competitive retail marketplace. Do you agree? Do investor-owned utilities enjoy any benefits public power does not?*

We vehemently disagree with unfounded assertions that public power somehow enjoys unfair advantages or subsidies. The issue of equity is much broader than taxes. When comparing public power to private power, it is crucial to first remember that we were created for different purposes and have completely different structures – public power is nonprofit, local and community-owned (our shareholders are our customer-owners); private power is for-profit and benefits from the tax advantages available to private corporations.

Each of the electric industry's three segments enjoy some form of tax "advantage." And, although some industry participants may argue otherwise, the increasing competitiveness of the electric utility industry has no relationship to the rationale supporting tax-exempt financing. Because they are private corporations, investor-owned electric utilities enjoy federal subsidies in the form of tax benefits, such as retention of excess deferred taxes and the use of accelerated depreciation methods of accounting. In addition, investor-owned utilities have been able to issue tax-exempt bonds to finance pollution-control devices. (According to information from *Moody's Public Utilities Manual*, outstanding tax-exempt debt issued by Ohio investor-owned utilities for pollution-control facilities exceeds the value of *all* of the outstanding tax-exempt debt issued by Ohio municipal electric systems.) Rural electric cooperatives benefit from low-interest government loans, loan guarantees and technical assistance. As local government entities, municipal electric systems may issue tax-exempt bonds to finance capital investments, such as generating capacity or new distribution lines. This is the same tool the municipality would use to pay for construction of a new road or wastewater treatment plant. In addition, it is important to note that the tax-exempt bonds used by public power systems carry with them restrictions on the amount of private-use allowed for these facilities.

In many respects, the "playing field" is actually tipped decidedly in favor of the private utilities who enjoy the advantages of size, financial superiority and market power; and who are free of requirements such as sunshine laws, open records laws and other public accountability and responsibility standards that both constrain and define public power.

For instance, Ohio municipal electric communities face equity issues not currently faced by other suppliers in our state. In addition to the sales limitation in the Ohio Constitution, municipal systems, as part of our foundation as local government entities, are held to public accountability standards that other suppliers are not, including:

- Public purpose requirements
- Public Records Law (Ohio Revised Code Section 149.43)
- Sunshine Law (O.R.C. Section 121.22)
- Competitive bidding (O.R.C. Section 735.05)
- Conflict of interest standards (O.R.C. Section 102.03)
- Prevailing Wage Law (O.R.C. Section 4115.05)
- Multiple trade contracting (O.R.C. Section 153.50)
- Investment restrictions (O.R.C. Section 135.14)
- Local regulation by consumers via referendum and initiative
- Civil service (O.R.C. Section 124.01 et seq.)
- Public hearings on budgets
- Public election (or recall) of chief executive officer
- Public hearing and approval of financing
- Prohibition of partnership with a private entity (Article VIII, Section 5, Ohio Constitution)

4. *If Congress were to mandate retail competition, please provide any recommendations you have with respect to the following issues.*

- a. *Stranded investment: How should investor-owned utilities' stranded investment be treated? Does your company face anything similar and, if so, how should it be treated?*

Any retail stranded cost recovery mechanism should ensure that stranded costs are legitimate, verifiable and mitigated to the fullest possible extent. In addition, there should be a determination that there was a reasonable expectation for recovery. On the retail side, we are supportive of the recovery mechanism contained in Ohio House Bill 220 – retail stranded costs are collected through a surcharge on the distribution system, with a price cap. On the wholesale side, we believe there is no basis for recovery of stranded costs because there was effective wholesale competition in Ohio prior to the implementation of the Energy Policy Act of 1992. We oppose any stranded cost recovery in the form of an exit fee.

Ohio public power systems do have some investments that may be stranded with the advent of retail competition – some of our long-term power supply contracts and output from owned generation facilities may be at a cost that is above-market. In addition, depending on how retail customer choice and associated state-level tax changes are implemented, Ohio's municipal electric generators may face stranded cost issues. In keeping with our support of decision making at the local level, we believe these local stranded investment determinations should be made by individual public power systems.

- b. *Reciprocity: Should Congress consider provisions barring access to markets in states which have adopted retail competition by generators in states which have not? Which interests would this affect, and how?*

This is a matter of Constitutional law on which we have no position at this point.

- c. *Local distribution companies: Should Congress require unbundling of local distribution company services in order to subject them to competition?*

No. Ownership and control over the metering and billing functions for distribution services should remain with the distributing utility for purposes of coordination, reliability and safety. Distribution utilities have been, and should continue to be, responsible for reading and maintaining the meters, as well as the billing functions associated with distribution services.

We hope these responses to your questions will prove helpful in your examination of electric utility industry restructuring. I welcome the opportunity to discuss our responses in more detail. Please call me, OMEA Executive Director Janine Moon or OMEA Manager of Government Affairs Jolene Harman at (614) 337-6222 if we can be of further assistance. Thank you for your interest and consideration.

On behalf of the members,

A handwritten signature in dark ink, appearing to read "Kenneth L. Hegemann". The signature is fluid and cursive, with a large initial "K" and "H".

Kenneth L. Hegemann, P.E.
President

Enclosure: OMEA Federal Electric Utility Industry Restructuring Issues

cc: AMP-Ohio Board of Trustees
OMEA Board of Directors
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